



December 5, 2005

SJ35 – Study Group 1 Response:

1) "examine the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety and to study whether consolidating boards and providing subgroups within boards would increase cost efficiencies and governance efficiencies while protecting the public safety."

In some cases, Combining Boards makes sense when:

- *there is significant overlap of practice* (i.e. Osteopaths joining the Board of Medical Examiners). Where there is no significant overlap it does not. In the case of Massage Therapy, we believe that the profession should not be combined with any of the current boards. None of them are appropriate to meet the needs of the profession due to its diversity: there is no significant overlap with any one profession.
- *the boards have similar objectives*. For example, we've been told that massage therapy should be placed with the Alternative Health Care Board. It is not an appropriate placement due to the difference in objectives: massage therapy is a complementary practice, meaning that we work with (not instead of) other health care professions. Naturopaths and Midwives are clearly alternatives to allopathic care. In addition, the threshold of training and (and competence) needed to meet consumer safety issues is much higher in Naturopathic and midwifery professions than it is in massage therapy. Yet, it is very possible that those same (unreasonable) standards would be applied to massage therapists if regulated by the AHCB.
- To be successful, the size of the professions combined should also be considered and taken into account when determining board composition. Representation should be determined in proportion to the numbers of practitioners regulated.

The legislative intent when the AHCB was created was to provide a place where small professions could be regulated with maximum cost-effectiveness. Massage therapists would outnumber the current licensees on the AHCB by a greater than 15 to 1 margin (we estimate 1500 potential licensees for massage therapy). The professions currently regulated by the AHCB would be marginalized as massage therapy issues would consume most of its time. Due to the sheer number difference, a large amount of time would be spent on the profession with the most practitioners, but representation would be in the minority, *which is unfair to both the majority and minority professions*.

In General, Board Consolidation does not protect the public safety:

With a combined board of several professions, each member does not have a specific understanding of another's professional scope. This could create for confusion, erroneous assumptions, and unfair/unreasonable standards of practice being placed upon professions that are combined with professions with a higher level of competency/standards. This causes a burden on the profession and sets an unreasonable threshold of protection. Over protection of the public can be just as harmful as under protection, in that it unreasonably restricts public access to services.

In our experience, when we approached the Alternative Health Care Board during past licensing efforts, the midwives and naturopaths did not want massage therapists deciding issues affecting

them due to scope issues, but did not feel the same about making decisions about massage therapy. This type of professional arrogance and the presumption of knowledge would be devastating to the practice of any emerging profession.

Board consolidation does not protect emerging professions from unreasonable regulation by already established professions.

Emerging professions board members on an already established board will not have as strong a voice or will not be heard. The stronger professions tend to intimidate those board members of lesser background, lesser scope, lesser training, and lesser experience with board issues.

Therefore the potential for turf battles will continue. Whereas if a board is constructed of members of one profession, everyone understands the scope of that profession and that board is not bound by outside feedback.

Board consolidation could exacerbate turf wars, not prevent them.

Internal bickering due to turf wars could create an impasse, therefore making boards less effective. These disputes could be more costly and create inefficiency.

Board consolidation with subgroups within boards creates another layer of bureaucracy and seems contrary to the whole point of consolidating boards.

It would be more cost-effective to create Consumer Advocacy Screening / Arbitration Panels. These two panels (one for health related issues, one for non-health related issues) would be set up to hear all sides of the "merits of the case" (or dispute) and make decisions/recommendations based on competency, rather than protectionism of turf. They would be required to take the time to learn about the facts of the issues presented, and take evidence based on that presented by the disputing parties.

To avoid bias and potential conflicts of interest, there should be a separate board for health related issues versus non-health related issues. In health related issues, consumers would NOT be health professionals or members of health boards – there is an inherent bias by health professionals toward other professions and health related issues. A minimum of 5 persons are needed to provide for good discussion and to bring more insight into the panel. In addition, there should be not more than one or two legislators on the panels. A legislator's presence would be helpful to provide insight into that process. It would be helpful to have members who have experienced both allopathic and naturopathic health care for those staffing the health care panel.

These panels could be used in two ways:

- a) To screen legislation prior to the session to pre-arbitrate any differences between the professions, and to hear the "merits of the case" should there be any irreconcilable differences. They can then make recommendations to the legislature, which could adopt or reject those recommendations. It could even be required by statute that any legislation affecting professions must be heard by a screening panel first.
- b) To hear disputes between boards and make decisions as to how these differences should be handled.

Additional Questions:

1) If no board existed (exists) for your profession or occupation, how would you prove it is necessary for public health, welfare, or safety? (e.g. Some components that you might like to address would be: how do licensing, discipline, a board (instead of a program), regulation beyond discipline fit into serving public health, welfare, or safety? What would be your definitions of health, welfare, or safety?)

- Defining "public health, safety, and welfare issue"
Meeting any **one** of the criteria should suffice.
 - The Definition should also include "common good"
In *Board ABC's*, in the "Board Creation" Subsection, you state that "Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".
A definition needs to be developed for the term "common good." When licensing/creating a board for the profession, while the threshold of physical "harm" may be small or the other criteria may not be met, it is important to legislate in order to protect the existence of the profession. It is not done for the profession's sake, it is done to protect the consumer by ensuring that the consumer has access to a wide variety of services at a reasonable cost. It is not in the common good to limit or restrict professional scope of practice if another profession already "claims" that portion of the scope. Such limits create state-sanctioned monopolies and drives up consumer costs, while decreasing the availability of services.
 - "Health and Welfare" should include protection of access to a profession (with its commonly accepted scope of practice intact). Denial of services harms the public. Consumers should have the right to seek out health care from the provider of their choice, and have available to them the full scope of practice of that practitioner.
As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real. Yet, there is a bias to limit or restrict scopes of practice as there is a perception that already licensed professions are harmed if new professions' scopes are allowed to overlap, *even if the national standards of the profession being limited include that competency*. We believe that the public is actually harmed when access to services is decreased or limited to one type of service by limiting a profession's scope. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting scopes of practice and limiting access limits the consumer's possibilities for health and healing and is therefore harmful.
There are several ways for the legislature to protect access to a profession with its commonly accepted scope of practice intact, to ensure the survival of marginalized or currently unregulated professions:
 1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)
 2. Create competency-based scopes of practice that allow for overlap of scopes of practice. Boards and Licensure should be geared toward competency: if the professional is trained in that competency, then they should be able to perform that competency.
 3. Adopt a stance that overlapping scopes of practice do indeed exist, and instead of limiting it, embracing it: it will actually benefit the consumer, drive down costs, enhance competition, and improve accessibility to services.
 - Protecting the public's health, safety, welfare and common good also includes granting Title licensure to "non-invasive" professions (such as massage therapy). Practice acts should be

reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).

- In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.
- We believe that a title act/ board serves the consumer/public and the profession by:
 1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
 2. defining standards so that consumers can be fully informed
 3. providing a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.

All of the following functions of board / licensing are important to the protection of the public.

With Regard to Licensure:

- licensure defines standards of practice, so that consumers can be fully informed as to what constitutes the standard
- licensure creates a mechanism for consumers to find "qualified" practitioners
- licensure provides a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.
- licensure defines (thus protects) the scope of practice of the profession which ensures consumer access to that profession

With Regard to a Board:

- There are the usual tasks performed by any board and they apply here as well. Boards are better suited to address these issues than delegating them to a non-professional or departmental employee:
 - Refuse to issue or renew or may suspend, revoke, censure, reprimand, restrict or limit the license of or fine anyone in violation
 - Adopt, amend and enforce rules consistent with the law relative to consumer health, safety and welfare
 - Establish minimum standards of practice and code of conduct via rulemaking
 - Establish and enforce criteria for professional standards and rules of conduct
 - Determine what is and is not unprofessional conduct
 - Establish and enforce criteria for continuing competence
 - Makes recommendations for further training, standards, education.
 - A Board provides a place for consumers to complain

While there are nationally accepted guidelines for massage therapists, there are still atypical types and forms of training, such as apprenticeships. A Board made up of professionals and consumers would be able to ensure that qualified persons are not overlooked due to atypical training, nor allow unqualified persons to become licensed because of lack of knowledge on the part of departmental personnel. Our understanding is that this happened with the nursing board recently. A Board would:

- Screen atypical applications
- Define what training is valid.

2) How do you think fees should be determined? (What are the basic costs? Should there be different levels of boards or programs to meet different costs?)

The BLMTB has no informed comment on this, although we tend to lean toward a "fee for service" scheme.